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In a recent case the equitable nature of the doctrine was recognized. A debtor against whom there existed a judgment lien gave a warranty deed of land which he expected to inherit. The land subsequently descended, and the court held that the grantee took the land subject to the judgment lien. *Bliss v. Brown*, 96 Pac. 945 (Kan.). If the legal operation of the doctrine had been rigidly followed, the creditors' rights would have been defeated. The unfortunate results of some of these American cases emphasize the dangers which arise when courts of law, in passing on cases which in reality demand the application of equitable principles, fail to appreciate that intrinsic element.

THE RIGHT OF AN INDIVIDUAL TO PROSECUTE A PUBLIC WRONG. — In a recent case where the plaintiff, a private citizen, although he alleged no special damage, sought to enjoin the defendant from obstructing the land between high and low water mark, the court held that no right to a highway on the strip of land existed, but that even assuming there was such a right the plaintiff was not the proper party to protect it. *Barnes v. Midland Railroad Terminal Co.*, 126 N. Y. App. Div. 435. The *prima facie* right of the state to all seaports and arms of the sea is well established and is in its nature twofold.¹ The profits of the sea coast and havens belong to the sovereign; any invasion of this *jus privatum* is a purpresture.² On the other hand the sovereign holds for the benefit of all its subjects the right that they may at all times have free and unobstructed passage, and any obstruction of this *jus publicum* is a public nuisance, similar to the blocking of highways and bridges.³ At the suit of the state a court of equity will, of course, enjoin a violation of these rights⁴ since the legal remedy is inadequate.⁵ But an individual has no ground for complaint when a purely private right of the state is violated,⁶ nor would there seem to be any doubt that he cannot bring suit even when a public right is invaded.⁷ The state is the proper plaintiff in such a case, as is the trustee and not the *cestui* in actions to protect the trust property.⁸

An individual, however, may file a bill to enjoin a public nuisance if he shows special damage,⁹ that is, if there is an injury peculiar to himself and independent of the annoyance suffered by the public at large.¹⁰ Indeed a bill will be denied if the damage shown by the complainant, while differing in degree from the inconvenience to the public, is of the same kind.¹¹ This indicates that those cases in which the individual may have relief are not in essence exceptions to the general rule that only the state may sue, but are, rather, a necessary result of the fact that the defendant's act may embody two distinct wrongs: one against the public; the other against the indi-

¹ Hale, *De Jure Maris*, 12; *De Jure Portibus*, 85.

² *People ex rel. v. Jessup*, 160 N. Y. 249; see also *Attorney-General v. Chamberlaine*, 4 Kay & J. 292.

³ *King v. The Morris & Essex R. R. Co.*, 18 N. J. Eq. 397, 399.

⁴ *People v. Sturtevant*, 9 N. Y. 263.

⁵ *Silliman v. Hudson River Bridge Co.*, 4 Blatchf. (U. S.) 395.

⁶ See *Engs v. Peckham*, 11 R. I. 210.

⁷ *Jacksonville Ry. Co. v. Thompson*, 34 Fla. 346.

⁸ *Carey v. Brown*, 92 U. S. 171.

⁹ *Buskirk v. U. J. Jude Co.*, 115 N. Y. App. Div. 330.

¹⁰ *Nottingham v. B. & P. R. R. Co.*, 3 McArthur (D. C.) 517; 19 HARV. L. REV. 541.

¹¹ *Pittsburg, Ft. W. & C. Ry. Co. v. Cheevers*, 149 Ill. 430.

vidual. So, although proceedings have been or may be begun by the attorney-general on behalf of the state to restrain a public nuisance, an individual who has sustained special damage may also obtain relief.¹²

Another phase of this subject has been before the courts in the so-called "liquor cases."¹³ It was contended that statutes which made the selling of spirituous liquor indictable as a public nuisance and gave to every citizen, irrespective of special damage, the right to have such nuisance enjoined, were unconstitutional. As a general rule, it is true, equity will not intervene to prevent the commission of a crime as such,¹⁴ but it will not refuse to protect public or property rights merely because the acts complained of happen to be criminal.¹⁵ Nor can it be urged that these statutes deprive the defendant of the right to trial by jury, for the Constitution does not confer the right in cases where it did not exist previous to the adoption of the Constitution.¹⁶ Moreover, since the granting of an injunction is not punishment within the meaning of the Constitution,¹⁷ there is no question of double jeopardy involved.¹⁸ A private citizen cannot abate a public nuisance, for the destruction of property is a trespass even though it is being used for an illegal purpose,¹⁹ but the "liquor cases" are sound in holding that the state may empower individuals to enjoin a public nuisance, as this in fact merely involves a matter of procedure.²⁰

THE EXTENT OF THE CLAIM NECESSARY FOR ADVERSE POSSESSION. — At common law a disseisee, in addition to his right of entry which might be tolled by descent cast, discontinuance, or other cause, could regain his land by a writ of entry or other form of real action.¹ It was against these forms of action that the first statutes of limitation were directed.² Since mere possession without actual disseisin would never toll the entry³ and force the true owner to resort to an action, these old statutes could put title only in disseisors. The statute of James,⁴ on which the later statutes are based, merely barred the right of entry after twenty years. On its face, therefore, this statute would put title in any one against whom entry could have been made. But the judges for many years required a disseisin to set this statute running,⁵ probably because only disseisors had acquired rights by the former statutes. This was nothing less than judicial legislation and was

¹² *Cook v. Mayor, etc.*, 6f Bath, L. R. 6 Eq. 177.

¹³ *Littleton v. Fritz*, 65 Ia. 488.

¹⁴ *Cope v. District Fair Ass.*, 99 Ill. 489.

¹⁵ *Allis Chalmers Co. v. Reliable Lodge*, 111 Fed. 264, where strikers were enjoined, although their acts constituted a statutory crime. But see 9 HARV. L. REV. 521.

¹⁶ *People ex rel. v. Mayor of Alton*, 233 Ill. 542; *People ex rel. v. Flaherty*, 119 N. Y. App. Div. 462.

¹⁷ *State ex rel. v. Roby*, 142 Ind. 169, 189.

¹⁸ *Ex parte Allison*, 99 Tex. 455. Cf. *State ex rel. v. Vankirk*, 27 Ind. 121 (proceeding for surety of the peace), and *Gardner v. The People*, 20 Ill. 430 (sustaining ordinances making punishable an act which is also punishable under state laws).

¹⁹ *State v. Stark*, 63 Kan. 529; 15 HARV. L. REV. 415.

²⁰ *Littleton v. Fritz*, *supra*.

¹ Co. Lit. 239 a.

² St. 32 Hen. VIII, c. 2. See Co. Lit. 115 a.

³ *Doe d. Souter v. Hull*, 2 D. & R. 38.

⁴ St. 21 Jac. I., c. 4.

⁵ *Reading v. Rawsterne*, 2 Ld. Ray. 829.